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From:

Sent: Tuesday, July 02, 2013 10:44:05 AM

To:

Cc:

Subject: Hire Act Credit matter

This email is in response to your request for assistance. The
claimed the Hire Act Credit on its 2d, 3d and
4th quarter Forms 941. According to the information provided, Exam has
asked whether the taxpayer is a federal entity and therefore not entitled to the
credit. The Taxpayer contends it is a not a federal instrumentality and is
and therefore is eligible for the credit.

A "qualified employer" is eligible for the credit. Section 3111(d)(2)(A) of the Code
defines qualified employer as any employer other than the United States, any
State, or any subdivision thereof, or any instrumentality of the foregoing.

The taxpayer was created by an act of Congress in
(as well as the
regulations thereunder) states that officers and employees of shall not be
considered officers or employees of the United States and shall not be
considered a department, agency, or instrumentality of the Federal Government.

In memorandum AM2009-002 (released Feb. 6, 2009) (attached) addressing the
employment status of federal workers hired under personal service contracts,
CC:TEGE has taken the position that where an authorizing federal statute states
how workers are to be classified for federal tax purposes, the authorizing statute
controls. Where the authorizing statute or another federal statute does not
specify the tax treatment of the worker, the Internal Revenue Code (Code)
applies, and classification of the worker will be determined by application of the
Code's common law test to the specific facts and circumstances. We believe we
should take a similar position with respect to entities related to the Federal
government. That is, that where an authorizing statute specifies an entity's
federal instrumentality status, the authorizing statute controls. Where the
authorizing statute or another federal statute does not specify the entity's status,
the Internal Revenue Code (Code) applies, and the entity's federal

instrumentality status will be determined by application of the factors in Rev. Rul. 57-128 to the specific facts and circumstances.

Therefore, we believe that _____ should not be treated as a federal instrumentality for purposes of its eligibility to claim the Hire Act Credit.